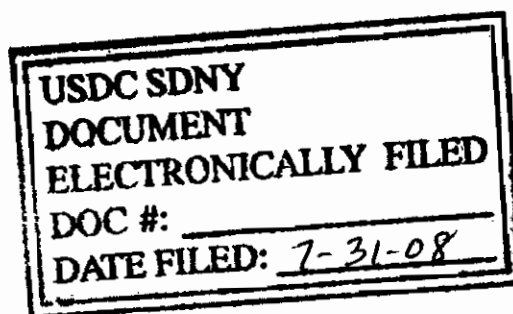


Greenberg Traurig

James W. Perkins, Esq.
(212) 801-3188
perkinsj@gtlaw.com



July 29, 2008

VIA FACSIMILE

Honorable Laura Taylor Swain
United States District Court Judge
United States Courthouse
500 Pearl Street, Room 755
New York, New York 10007

Re: ***Mercer Capital, Ltd. v. U.S. Dry Cleaning Corp.***
08 CV 5763 (LTS)

Dear Justice Swain:

We were retained yesterday to act as counsel in the above-captioned matter on behalf of the defendant U.S. Dry Cleaning Corporation. A copy of our notice of appearance is enclosed and it and the Rule 7.1 Statement is being filed today. We have received a copy of the letter of plaintiff's counsel to the Court dated July 24, 2008 by which counsel requests permission to move for a default judgment. Defendant objects to the filing of any such motion and we request that the Court deny the request given the filing of our notice of appearance.

We also write the Court to request an extension of time to respond to the complaint. I have a long-planned family vacation beginning at the end of this week and will not be returning to my office until August 18, 2008. I telephoned plaintiff's counsel yesterday, explained my circumstances and requested plaintiff's consent to an extension of time to respond to the complaint until mid-September 2008; however, plaintiff's counsel would not consent to the request.

We see no prejudice by this requested adjournment to accommodate a personal conflict. We note that the Court *sua sponte* determined that the complaint on its face did not allege subject matter jurisdiction (copy of order enclosed), that plaintiff's counsel recently submitted a declaration seeking to correct that defect, but according to the docket, the Court has not yet made a determination on the issue. The Court's July 7, 2008 order requires that plaintiff "file and serve a supplement to the Complaint" and we are uncertain whether the attorney's declaration that plaintiff filed complies with the order. (For example, how would the defendant answer the statements in the declaration as a matter of pleading?)

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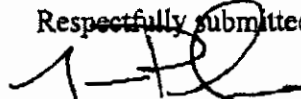
Honorable Laura Taylor Swain
July 29, 2008
Page 2

Accordingly, a question still remains whether the complaint, as served, is defective in any event.

Under the circumstances, we respectfully request that the Court not permit the filing of the motion for default judgment and grant our request to extend the time for defendant to respond to the complaint to September 12, 2008.

We are available at the Court's earliest convenience to address these issues.

Respectfully submitted,



James W. Perkins

106665.010100 / #239070195v1

Enclosures

cc: Norah Hart, Esq. (w/encl., via facsimile)
Miriam Zakarin, Esq. (w/encl., via facsimile)

*Defendant's time to
answer a move is
extended to 8/29/08.*

*SO ORDERED
D. J. H. H. H.
US DJ
7/30/08
Part I*

James W. Perkins (JWP-6684)
GREENBERG TRAURIG, LLP
200 Park Avenue
New York, New York 10166
Tel. No.: (212) 801-9200
Fax: (212) 801-6400

Attorneys for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERCER CAPITAL

Plaintiff,

- against -

U.S. DRY CLEANING CORPORATION,

Defendant.

X

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X

Case No.: 08 CIV 5763 (LTS)

NOTICE OF APPEARANCE

TO THE CLERK OF THIS COURT:

Please enter the appearance of Greenberg Traurig, LLP in this case as counsel for Defendant U.S. Dry Clearing Corporation. By entering this appearance, Defendant does not waive, and expressly reserves any right it may have to appear specially.

Undersigned counsel is admitted to practice in this Court.

Dated: New York, New York
July 29, 2008

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: 

James W. Perkins (JWP 6684)

200 Park Avenue
New York, New York 10166
(212) 801-9200

TO: TRUEHAFT & ZAKARIN, LLP
Attorneys for Plaintiff
347 5th Avenue, Suite #1000
New York, New York 10016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MERCER CAPITAL LTD.,

Plaintiff,

-v-

U.S. DRY CLEANING CORPORATION,

Defendant.

ORDER

WHEREAS, this action was commenced by the filing of a Complaint on June 26, 2008; and

WHEREAS, the Court has reviewed such Complaint to ascertain the basis for assertion of subject matter jurisdiction in this court; and

WHEREAS, such Complaint asserts that the Court has jurisdiction based on diversity of citizenship (28 U.S.C. § 1332), but fails to allege the state citizenship of the members of the partnership Plaintiff; and

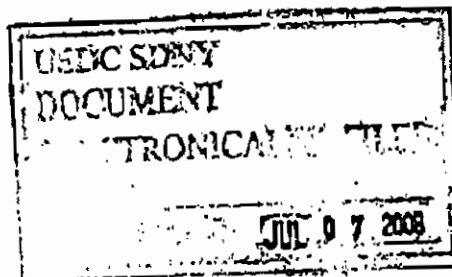
WHEREAS, for purposes of diversity jurisdiction, the citizenship of an artificial business entity other than a corporation is determined by reference to the citizenship of its members, see C.T. Carden v. Arkoma Associates, 494 U.S. 185 (1990); E.R. Squibb & Sons v. Accident & Cas. Ins. Co., 160 F.3d 925 (2d Cir. 1998); Keith v. Black Diamond Advisors, Inc., 48 F. Supp. 2d 326 (S.D.N.Y. 1999); and

WHEREAS, "subject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power," E.R. Squibb & Sons v. Accident & Cas. Ins. Co., 160 F.3d 925, 929 (2d Cir. 1998) (citation omitted), and Rule 12(b)(3) of the Federal Rules of Civil Procedure provides that "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action;" it is hereby

ORDERED, that plaintiff shall, no later than ten (10) days from the date of this Order file and serve a Supplement to the Complaint containing allegations sufficient to demonstrate a basis for subject matter jurisdiction in this Court or otherwise show cause in writing as to why this case should not be dismissed for lack of subject matter jurisdiction.

Dated: New York, New York
July 7, 2008


LAURA TAYLOR SWAIN
United States District Judge



Greenberg Traurig

Transmittal Cover Sheet

Name: Honorable Laura Taylor Swain
Company: United States District Court Judge
Fax No.: (212) 805-0426
Tel No.: (212) 805-0417

Name: Norah Hart, Esq.
Company: Treuhaft & Zakarin LLP
Fax No.: (212) 725-1116
Tel No.: (212) 725-6418

Name: Miriam Zakarin, Esq.
Company: Treuhaft & Zakarin LLP
Fax No.: (212) 725-1116
Tel No.: (212) 725-6418

FROM James W. Perkins, Esq.

File Number 106665.010100

RE: *Mercer Capital, Ltd. v. U.S. Dry Cleaning Corp., 08 CV 5763 (LTS)*

Comments

Date July 29, 2008

No. Pages Including this cover sheet 6

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